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**DIRECTOR'S OFFICE  
TECHNOLOGY CENTER 2600**

**ON PETITION**

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In re Application of: :  
Leyten, et al. :  
Application No. 09/286,027 :  
Filed: April 5, 1999 :  
For: PORTABLE COMMUNICATION DEVICE :  
ARRANGED FOR STATE-DEPENDENTLY :  
CONTROLLING NON-UNIFORM SELECTION :  
PATTERNS AMONG POSSIBLE ANTENNA :  
DIRECTIVITY CONFIGURATIONS :

This is a decision on the petition filed November 6, 2002, to withdraw the holding of abandonment.

A Notice of Abandonment was mailed September 30, 2002 for failure to timely submit a response to the non-final Office action mailed October 24, 2001 and subsequently re-mailed November 8, 2001.

Petitioner alleges that the Office action mailed October 24, 2001 was not received and that the re-mailing of November 8, 2001 was incomplete.

Based on MPEP § 711.03(c), in absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

- (a) a statement from the practitioner stating that the Office communication was not received by the practitioner;
- (b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

The petitioner has complied with all the requirements above. Accordingly, the petition is **GRANTED**.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application file will be forwarded to the Technology Center's technical support staff to re-mail the non-final Office action and to restart the period for response.

*Allen R. MacDonald*

Allen R. MacDonald, Director  
Technology Center 2600  
Communications